

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES KERN,

Plaintiff,

v.

JIM COOPER, et al.,

Defendants.

No. 2:23-cv-0618 AC P

ORDER

Plaintiff, a county prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Also before the court is plaintiff's request for forms to add information to his complaint. ECF No. 6.

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). ECF No. 5. Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time

1 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
2 § 1915(b)(2).

3 In his request for forms, plaintiff states that he would like the proper forms to add
4 additional claims to his complaint. ECF No. 6. It appears that plaintiff is seeking a complaint
5 form with which to amend the complaint. Since plaintiff is still within the time for filing an
6 amended complaint as of right, see Fed. R. Civ. P. 15(a)(1), the request for forms will be granted
7 and the Clerk of the Court will be directed to provide plaintiff with a new complaint form.

8 Plaintiff is informed that the court cannot refer to a prior pleading in order to make his
9 first amended complaint complete. Local Rule 220 requires that an amended complaint be
10 complete in itself without reference to any prior pleading. This is because, as a general rule, an
11 amended complaint supersedes the original complaint. Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.
12 1967) (citations omitted), overruled in part by Lacey v. Maricopa County, 693 F.3d 896, 928 (9th
13 Cir. 2012) (claims dismissed with prejudice and without leave to amend do not have to be re-pled
14 in subsequent amended complaint to preserve appeal). Once plaintiff files a first amended
15 complaint, the original complaint no longer serves any function in the case. Therefore, in an
16 amended complaint, as in an original complaint, each claim and the involvement of each
17 defendant must be sufficiently alleged. In the event plaintiff does not file an amended complaint,
18 the court will proceed to screen the original complaint.

19 In accordance with the above, IT IS HEREBY ORDERED that:

20 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 5) is GRANTED.
21 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
22 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
23 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
24 appropriate agency filed concurrently herewith.

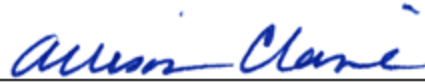
25 3. Plaintiff's request for forms (ECF No. 6) is GRANTED and the Clerk of the Court is
26 directed to send plaintiff a copy of the prisoner complaint form used in this district.

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1 4. If plaintiff does not file an amended complaint within thirty days of the service of this
2 order, the court will assume that he is choosing to proceed on the original complaint which will
3 then be screened in due course.

4 DATED: October 11, 2023

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6 ALLISON CLAIRE
7 UNITED STATES MAGISTRATE JUDGE
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